

IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF VIRGINIA  
ALEXANDRIA DIVISION

UNITED STATES OF AMERICA, )  
                                )  
Plaintiff,                 )  
                                )  
v.                            ) CIVIL ACTION NO. 1:12-cv-828  
                                ) (JCC-IDD)  
CAPITAL ONE, N.A. and     )  
                                )  
CAPITAL ONE BANK (USA), N.A., )  
                                )  
Defendants.                )  
                                )

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**MEMORANDUM IN SUPPORT OF  
JOINT MOTION FOR APPROVAL OF  
PROPOSED PAYMENTS TO SERVICEMEMBERS PURSUANT TO  
PARAGRAPHS 62 & 48 OF THE AMENDED CONSENT ORDER**

Plaintiff United States of America and Defendants Capital One, N.A. and Capital One Bank (USA), N.A. (collectively “Capital One”) state as follows in support of their Joint Motion for Approval of Proposed Payments to Servicemembers Pursuant to Paragraphs 62 & 48 of the Amended Consent Order between the United States and Capital One, which the Court entered on December 21, 2012 (the “Amended Consent Order”). [Dkt. No. 9.]:

**BACKGROUND**

On July 26, 2012, Plaintiff filed a complaint alleging that Capital One violated the Servicemembers Civil Relief Act (“SCRA”) from at least July 15, 2006 to November 21, 2011. [Dkt. No. 1.] The parties entered into a consent order resolving these allegations. [Dkt. No. 2.] On December 21, 2012, the parties proposed and the Court entered the Amended Consent Order, which incorporated minor changes to the process for mailing payments to servicemembers. [Dkt. No. 9.]

Paragraph 62 of the Amended Consent Order allows Capital One to submit a proposal to remediate servicemembers with accounts that Capital One acquired pursuant to a Purchase and Assumption Agreement entered into with HSBC Finance Corporation, HSBC USA, Inc., and HSBC Technology and Services (USA) Inc. (“HSBC Accounts”), when those servicemembers may have not received the appropriate amount of benefits under the SCRA, in a manner similar to that described in Capital One’s proposal to remediate servicemembers under Paragraph 48 of the Consent Order, which this Court approved on December 20, 2012 (“Proposal I”). [Dkt. Nos. 6, 7, & 8.]

Pursuant to Paragraph 62 of the Amended Consent Order, Capital One submitted the proposal to remediate servicemembers with HSBC Accounts (“Proposal II”) to the United States on July 17, 2013. Proposal II, similar to Proposal I, includes payments to servicemembers where an independent consultant reviewed their accounts and determined that they did not receive the appropriate amount of SCRA benefits. Also similar to Proposal I, Proposal II includes payments to certain servicemembers whose accounts the independent consultant did not review. Specifically, as with Proposal I, it includes payments to Reservists and National Guard members, who the independent consultant determined were the servicemembers with HSBC Accounts most likely to have not received the appropriate amount of SCRA benefits (i.e., most likely to have had a “shortfall” in benefits). The payments to Reservists and National Guard members are based on the estimated average shortfall amount for HSBC Accounts. Similar to Proposal I, Proposal II also includes additional payments to charitable organizations. The United States approved Proposal II on July 29, 2013. As with Proposal I, the parties have 30 days from the date the United States approved Proposal II to seek the Court’s approval of the same.

## **PROPOSED PAYMENTS**

Proposal II includes the following payments:

1. \$1,863,611.76 to servicemembers with HSBC Accounts, including:
  - a. \$179,052.00 to servicemembers who an independent consultant determined had a shortfall in benefits under the SCRA, with each servicemember receiving the calculated shortfall amount on his or her account plus \$500.00 or triple the amount of the calculated shortfall, whichever is greater; and
  - b. \$1,684,559.76 to Reservists and National Guard members with HSBC Accounts not reviewed by an independent consultant, with each Reservist or National Guard member receiving \$103.17, which represents the estimated average shortfall amount for HSBC Accounts; and
2. \$36,388.24 to the Army Emergency Relief, Air Force Aid Society, and Navy Marine Corps Relief Society charitable organizations, including:
  - a. \$28,204.54 to Army Emergency Relief, which represents a portion of the total payment to charitable organizations proportionate to the number of Reservists and National Guard members identified in paragraph 1(a) above serving in the United States Army;
  - b. \$4,091.85 to the Air Force Aid Society, which represents a portion of the total payment to charitable organizations proportionate to the number of Reservists and National Guard members identified in paragraph 1(a) above serving in the United States Air Force; and
  - c. \$4,091.85 to the Navy Marine Corps Relief Society, which represents a portion of the total payment to charitable organizations proportionate

to the number of Reservists identified in paragraph 1(a) above serving in the United States Navy or United States Marine Corps.

**CONCLUSION**

For the reasons set forth above, the parties respectfully request that this Court grant their Joint Motion for Approval of Proposed Payments to Servicemembers Pursuant to Paragraphs 62 & 48 of the Amended Consent Order.

Dated: August 28, 2013

Respectfully submitted,

/s/  
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BRYAN A. FRATKIN

BRYAN A. FRATKIN  
MYRA H. CHAPMAN  
McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219  
Tel.: (804) 775-1000  
Fax: (804) 775-1061  
E-mail: bfratkin@mcguirewoods.com  
E-mail: mchapman@mcguirewoods.com  
*Counsel for Defendants*  
*Capital One Bank (USA), N.A.*  
*and Capital One, N.A.*

**CERTIFICATE OF SERVICE**

The undersigned certifies that on August 28, 2013, the foregoing was served by ECF on all parties who have made an appearance in this case.

/s/ \_\_\_\_\_

Bryan A. Fratkin  
McGuireWoods LLP  
One James Center  
901 East Cary Street  
Richmond, Virginia 23219  
Tel.: (804) 775-1000  
Fax: (804) 775-1061  
E-mail: bfratkin@mcguirewoods.com  
*Counsel for Defendants*  
*Capital One Bank (USA), N.A.*  
*and Capital One, N.A.*